

#18160-K

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WATER WAY EASEMENT
AND
WELL AGREEMENT

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THIS AGREEMENT made by and between DONALD M. LEFLER, hereinafter called "LEFLER;" LINDA M. WARNER, hereinafter called "WARNER;" and DENNIS V. GIBSON and SHARON M. GIBSON, husband and wife, hereinafter called "GIBSON."

R E C I T A L S

A. WHEREAS, "WARNER" is the owner of a certain parcel of real property upon which is located a certain water well and piping; and

B. WHEREAS, the real property owned by "WARNER" is subject of a certain trust deed, given to secure an indebtedness as between Grantor Harold Angus and Jessie Angus, husband and wife, to Transamerica Title Insurance Company as Trustee and "LEFLER" as beneficiary; and said real property is further subject to a certain Agreement to Use Water Well, in which "LEFLER" is Grantee; and

C. WHEREAS, "GIBSON" desires to purchase certain property vested in William McCarthy and Donna McCarthy, husband and wife; and

D. WHEREAS, by prior practice and by an Agreement to Use Water Well recorded at M-80, page 8998, records of Klamath County, "WARNER" and "WARNER'S" predecessor in interest has agreed to provide water, and the necessary easements to deliver such water to the properties presently owned by William McCarthy and Donna McCarthy, which is the subject of a pending sale to "GIBSON;" and

E. WHEREAS, the parties wish to memorialize their pre-existing agreements, to which "LEFLER" by this instrument does accede; and

F. WHEREAS, "GIBSON" is purchasing, and is to become the owner of certain real property located in the County of Klamath, State of Oregon, legally described as follows:

Lot 6, Block 2, TWIN RIVER VIEW, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

hereinafter referred to as "GIBSON PROPERTY;" and

G. WHEREAS, "WARNER" is the owner of certain real property located in the county of Klamath, State of Oregon, legally described as follows:

Lot 5, Block 2, TRACT NO. 1155, TWIN RIVER VIEW, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

hereinafter referred to as "WARNER PROPERTY;" now, therefore,

W I T N E S S E T H :

THE PARTIES AGREE AS FOLLOWS:

1. That "WARNER" and "GIBSON" shall each have an undivided one-half interest in the water, pump, piping and casings of that certain well located on "WARNER" "PROPERTY" and generally

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described as follows:

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"BEGINNING AT the Southwest Corner of the "WARNER PROPERTY" hereinabove described; running thence in a generally easterly direction a distance of 40' feet, more or less; running thence northerly a distance of 50' feet to the point of location to the subject well."

which said well shall be hereinafter referred to as "JOINT WELL," with the interest of "WARNER" to be subject to the trust deed and note securing an indebtedness owing to "LEFLER."

2. "WARNER" and "GIBSON" grant to each other an easement to appropriate water from "JOINT WELL" hereinabove described, to which said grant "LEFLER" agrees.

3. "WARNER" and "GIBSON" and/or their successors in interest, shall each be required to pay one-half of all costs to maintain in the present condition the well, pump, pipes and casings for "JOINT WELL." "WARNER" and "GIBSON" further agree that, before any major expense is incurred, each of the said parties shall jointly agree to the nature and amount of such expenditure, before work is commence, and before any such expense is incurred.

4. In the event that "WARNER" or "GIBSON," and/or their successors in interest, fails to pay his or her proportionate share of costs upon demand, the other party may terminate the defaulting party's right to use the water during the period of default, and may file a lien upon the real property of the defaulting party by filing a Notice of Lien under this agreement with the County Clerk of Klamath County, Oregon. Any non-defaulting party may foreclose the lien as provided by ORS Chapter 88 and shall be entitled to attorney fees in such foreclosure.

5. "WARNER" further grants an easement ten (10) feet in width over and across "WARNER PROPERTY," which said easement or easements shall run from "JOINT WELL" as hereinabove described in a generally southerly direction to a point on the southerly property line of "WARNER PROPERTY" which is 50' feet from the Southwesterly Corner thereof.

6. The electrical service for the pumping presently in existence on the well is presently billed to "WARNER." "GIBSON" shall be required to pay to "WARNER" one-half of all electrical service costs attributable to the operation of the pump. "WARNER" and "GIBSON" presently agree that the sum of SEVEN AND NO/100THS DOLLARS (\$7.00) per month is an appropriate payment for electrical service to the pump. Should electrical rates or costs change in the future, "WARNER" and "GIBSON" agree that the monthly payment required to be made by "GIBSON" to "WARNER" shall be adjusted in accordance with the mutual agreement of the parties. In the event that the parties shall fail to agree to the appropriate amount of payment, the pump shall be separately metered, and the parties required to each pay one-half of the cost for such intallation, metering, electrical service, and pumping.

7. The rights created by this Agreement shall run with the land and in the event any party sells the land subject to the within Water Way Easement and Well Agreement, the purchaser shall be bound by this Agreement.

at the expense
of lot 6 & 11K's
in interest
both parties
OK 3/9